Secrt. II-27—100,000—21-5-52.

Public (Services) (19~~5~~ 47) Department.

Ms. SERIES.

G.O. No. 3451

3451

Dated 26-11-47

[Despatch Abstract.]

Public Services - Madras Civil Services (Classification, Control and Appeal) Rules - Provision for second appeal - Papers Recorded.

Extracts of notes from Public (Services-B) file bearing C.No.

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The file has now been sent to this department for remarks with reference to para 1 of the Commission's letter at p.1 c.f. For a brief history of the case please see the Revenue Department's note on pp.6-8 ante. In that note, the Revenue Department took the view (and this department agreed with them) that the petitioner had no right of appeal to Government as he had already exercised his right of appeal to the Board of Revenue against the order passed by the Collector. The Commission now contests this view and contends that in as much as the Board of Revenue imposed a different and higher form of penalty than that imposed by the Collector, its order should be taken as an original order imposing a penalty specified in Rule 8 of the Classification, Control and Appeal Rules within the meaning of Rules 17 and 20 and so an appeal must lie to a higher authority, in this case, Government, against such an order. The view taken by the Comm Revenue Department, in their note on pp.6-8 ante and which was accepted in this department follows precedents ~~and which~~ of this department's note on p.19 of G.O.No.316 P.W. dated 5-2-41. As the Commission now takes a different view, Legal Department, may be requested to advise whether the view ta'-- by the Commission is correct.

If the Commission's view is accepted, there will be no end to appeals. Nor does it appear to be the intention of Government when framing the Madras Civil Services (Classification, Control and Appeal) Rules to provide for such appeals. For, if that was so, rule 21(c) of the above rules would have specifically stated that when a penalty is enhanced by the appellate authority, a right of appeal would lie against such enhanced penalty. The remarks of Legal may be invited.

K.V.R.
14-3-47

K.R.M.
15-3-47.

Legal Department.

Rule 21(1)(c) of the Classification Rules specifically required the appellate authority to consider whether the penalty imposed by the subordinate authority is excessive, adequate or inadequate and to pass such order as it thinks proper. An order passed by an appellate authority, enhancing the penalty imposed by the subordinate authority is within the powers of the appellate authority under rule 21 (1)(c). The enhancement is ordered in virtue of the power conferred by rule 21(1)(c) and not under rule 8. The intention underlying rule 17(a) is to provide an appeal against an order passed under rule 8 and not a second appeal against an order passed under rule 21(1)(c). Any other construction of rule 17(a) will ~~and~~ lead to anomalous results; for instance, an appeal will lie against an order of the appellate authority imposing a lesser, but a different punishment. This is clearly not the intention.

2. At the same time, there is a good deal of force in what the Commission has said, viz., that the construction adopted above leads to a harsh result. The remedy however is to amend the Rules so as to provide for a right of second appeal in such cases. This point may kindly be considered by Public (Services).

K.V.R.
20-3-47.

Public (Services) Deptt.

The Legal Department note above may be perused.

'hey concur with the view taken by this Department above. 'he case may now be passed ~~k~~ on to Finance.

Necessary extracts may be taken in this department or consideration of the point raised in para 2 of the .egal department note above

K.V.
26-3-4

K.R.M. 28-3-47

Public (Services) Department

Please see the extracts of notes at page 1 ante.

2. Under Rule 17(a) of the Madras Civil Services (Classification, Control and Appeal) Rules, a member of a subordinate service is entitled to appeal from an order passed by an authority imposing upon him any of the penalties specified in rule 8. Under Rule 21(1)(c) of the same rules, the appellate authority should consider whether the penalty imposed by the subordinate authority is excessive, inadequate or inadequate and after such consideration pass such orders as it thinks proper. The appellate authority to whom an appeal is preferred can therefore enhance the original punishment if it thinks fit to do so and the rules do not provide for an appeal against such enhanced penalty. The Commission considers that it would be too harsh a construction of rules 17 and 20 of the Madras Civil Services (Classification, Control and Appeal) Rules to hold that where the ~~x~~ appellate authority to whom an appeal is preferred enhances the penalty or imposes a penalty different from that imposed by the subordinate authority, no appeal lies to the next higher authority against such enhancement or imposition. Legal also agree that there is good deal of force in the Commission's view and suggest that this department may consider the question of making provision for a second appeal in such cases.

3. The Madras Civil Services (Classification, Control and Appeal) Rules provide ~~for one appeal against an order~~ of punishment. If an appeal is to be allowed against the decision of the ~~appellate~~ authority, further appeals to still higher authorities have to be allowed and there will be no end to appeals. In this view, the provision of an appeal against the decision of an appellate authority would be undesirable. There is also the other aspect of the question. If, for example, a person appealed against a particular form of penalty imposed on him and the appellate authority, instead of giving him relief, enhances the penalty, it will certainly be most unfortunate. In such an event it is but fair that the order of the appellate authority is treated as an original order and an appeal is provided against it. A similar concession need not however be allowed where the appellate authority imposes a penalty which is merely different from that originally imposed as suggested by the Commission because the different penalty may be either more severe or less severe than the original penalty and if it is the latter, there is no point in providing a further appeal. The Commission's view so far as the more severe penalty is concerned seems reasonable. The remarks of the Departments of the Secretariat may perhaps be invited as to whether they are in favour of providing in the Madras Civil Services (Classification, Control and Appeal) Rules for an appeal against the order of an appellate authority if such order enhances the original penalty. If so, copies of the above note will be sent to them simultaneously. For orders.

This may be done.
P.K.V.
27-4-47.

K.R.M.
30-4-47

Copy of letter from the Secretary, Madras Public Service Commission No.3191-C/46-12. dated 24th February 1947.

Appeal - Sri P. Rama Podugal - late permanent Taluk Surveyor and acting Circle Officer. Bellary - Compulsory retirement

Our department letter No.2002-E.G/46-10, dated 13th February 1947.

I am to say that in the Commission's opinion it would be too harsh a construction of rules 17 and 20 of the Madras Civil Services (Classification, Control and Appeal) Rules to hold that, where the authority higher than that specified in the relevant column of the Appendix to those rules, in whom an appeal is preferred, enhances the penalty or imposes a penalty different from that imposed by the subordinate authority, no appeal lies to the next higher authority against such enhancement or imposition. A member of a service is entitled to one appeal from an order imposing on him any of the penalties specified in rule 78 of those rules. The penalty imposed by the Collector m in the case citeé was reduction in pay. An appeal lay and was preferred to the Board, against the Collector's order imposing that particular form of penalty. The Board imposed, or purported to impose, a different and higher form of penalty and its order imposing such a penalty must, in the Commission's opinion be taken as an original order imposing one of the penalties specified in rule 8 within the meaning of Rules 17 and 20, and so an appeal lies against such order. If, for instance, the Board had dismissed the delinquent in the case cited, it would be too harsh to hold that there is no right of appeal against dismissal merely because there is no second appeal. Against dismissal merely because there is no second appeal. Against the imposition of the particular penalty of dismissal the appeal would be a first appeal and not a second appeal. The Commission accordingly considers that there was no misapprehension in the case cited and that the delinquent's representation was correctly treated as an appeal to the Government who acted correctly in consulting the Commission before passing orders on it.

2. The Commission was obliged under the rules to advise as it did in its letter No.3191-C/46-10, dated 11th November 1946. But in the peculiar circumstances of the case, the Commission would suggest that the Government might relax the relevant pension rules and grant the delinquent the full pension which would have been admissible to him had he been invalided on medical certificate, instead of only two-thirds of it. The delinquent would ~~practically~~ be practically not then be worse off than when he appealed to the Government.

Government of Madras
Public (Services) Department

Letter No.823/47-6.

From

The Chief Secretary to Government,
Public (Services) Department,

To

The Secretary,
Madras Public Service Commission,
Madras.

Dated Fort St. George the 25th November, 1949.

Sir,

UBLIC SERVICES - Madras Civil Services (Classification, Control and Appeal) Rules - Provision for second appeal.

Your letter No.3191-C/46-12, dated 24th February 1947

With reference to paragraph 1 of the letter cited, I am directed to say that the question whether provision should be made in the Madras Civil Services (Classification, Control and Appeal) Rules for an appeal against an order of the appellate authority where such order enhances the original penalty was considered by the Government but was finally dropped.

Sd/ ** **
for Chief Secretary to Government.

With reference to the note on pp.2-3 above, Departments of the Secretariat, except Finance and Revenue are in favour of making provision in the Madras Civil Services (Classification, Control and Appeal) Rules, for an appeal against the order of an appellate authority ~~of~~ x if such order enhances the original penalty. Finance consider that the rules are far too cumbrous as they are and that what is required is a reduction in the volume of work to be done all round and that the appellate authority is not likely to enhance the punishment except in really bad cases. They also consider that a Government servant who appeals as a matter of course must take the chance of having the punishment enhanced if he is foolish or hardy enough to appeal where he has, in fact been let off lightly by the original authority. The Board of Revenue and the Revenue Department are of the view that so long as ample discretion to see that substantial justice is done is vested in responsible persons, there is no need ~~of~~ x to meddle with the rules as they stand. Since the majority of the Departments agree with the proposal, it is submitted for orders whether provision may be made in the Madras Civil Services (Classification Control and Appeal) Rules for a second appeal against the order of an appellate authority if such order enhances the original penalty

The Classification Rules as they stand provide for one appeal against an order of punishment. The appellate authority who entertains the appeal can confirm, reduce or enhance the penalty and there is no further appeal against his orders. The Madras Public Service Commission considers that an appeal should be provided against an order of the appellate authority, if such order enhances the original punishment. All Departments of the Secretariat except Finance and Revenue agree with the Commission's view. Finance and Revenue however consider that no change need be made in the existing rules. Orders in circulation may be taken as to:--

(1) whether an appeal should be provided against an order of the appellate authority when such an order enhances the original penalty,

or

(2) whether in view of the recommendation of Finance and Revenue, the rules may be left as they are.

** **
22-8-1947.

When an appellate authority enhances the original penalty there may be one further appeal.

K.R.M.
25-8-1947

The rules may stand as they are

O.P.R. - H.P.M.
2-11-47

I agree with H.P.M.

ARCHIBALD NYI - H.E.
8-11-47

Please see the orders in circulation above. The Commission may perhaps be informed of the decision. Subject to ....

to orders, a draft letter to the Commission is submitted for approval. After ~~the~~ issue the papers may be recorded for future reference.

[Issued as Letter No.823/47-6, dated 25-11-1947./ ** ** 22-11-47.

G.O.Ms.No.3451 Public (Ser.), dated 26-11-47.

PUBLIC SERVICES - Madras Civil Services (Classification, Control and Appeal) Rules - Provision for Second appeal.

(True copy)

S. Jayaramaraju 23/7

Office Assistant,
Madras Record Office.

aj/7.1

24/7/52.